

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2083

Introduced by Assembly Member Donnelly

February 23, 2012

An act to add Chapter 18 (commencing with Section 7450) to Title 7 of Part 3 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2083, as amended, Donnelly. Foreign Private Prison Commission.

Existing law provides for the administration of the state correctional system by the Department of Corrections and Rehabilitation under the direction of the Secretary of the Department of Corrections and Rehabilitation. Existing law requires the department to prepare plans for, and construct facilities and renovations within its master plan for which funds have been appropriated by the Legislature.

This bill would establish the Foreign Private Prison Commission, which, in cooperation with the Department of Corrections and Rehabilitation, would be responsible for the operation and administration of private prison facilities that are located in Mexico to house foreign nationals who have been convicted *in California* of offenses committed ~~in California~~ *a criminal offense that makes a foreign national subject to deportation under the federal Immigration and Nationality Act*. The bill would require the commission to conduct a cost comparison of executed privatization contracts every 5 years, and if the commission determines that the private prison facility costs are lower than costs of this state to provide the same services, would require $\frac{1}{2}$ of the difference between the state's costs and the private prison's costs to be deposited into the Correctional Service Fund, which would be

established by the bill. Moneys in the Correctional Service Fund would be available to the department for purposes of implementing the provisions of the bill upon appropriation by the Legislature.

The bill would become operative only if, before July 1, 2017, the United States enters into a treaty with Mexico to allow the incarceration of inmates outside of the United States in private prisons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 18 (commencing with Section 7450) is
2 added to Title 7 of Part 3 of the Penal Code, to read:

3
4 CHAPTER 18. FOREIGN PRIVATE PRISON COMMISSION
5

6 7450. (a) The Foreign Private Prison Commission is hereby
7 established, consisting of ~~—~~ *five* members, which shall include
8 the Secretary of the Department of Corrections and Rehabilitation.
9 The Governor shall appoint the remaining ~~—~~ *four* members
10 within 60 days after the effective date of this part. Members shall
11 serve ~~—~~ *year four-year* terms.

12 (b) Members of the commission are not eligible to receive
13 compensation, but are eligible to receive reimbursement of
14 expenses.

15 (c) The commission shall be responsible for the overall
16 operations and administration of private prison facilities that are
17 located in Mexico and that house foreign nationals who have been
18 convicted *in California* of ~~any a criminal offense in this state that~~
19 *makes the foreign national subject to deportation under the federal*
20 *Immigration and Nationality Act pursuant to Section 1227(a)(2)*
21 *of Title 18 of the United States Code.*

22 7451. (a) The Department of Corrections and Rehabilitation,
23 in cooperation with the Foreign Private Prison Commission, shall
24 issue a request for proposals for the construction and operation of
25 a private prison facility to be located in Mexico and to house
26 foreign national prisoners *who have been convicted in California*
27 *of a criminal offense that makes the foreign national subject to*
28 *deportation under the federal Immigration and Nationality Act*

1 *pursuant to Section 1227(a)(2) of Title 18 of the United States*
2 *Code.*

3 (b) On publication, any request for proposals shall be provided
4 to the Joint Legislative Budget Committee for its review.

5 (c) To be considered for an award of a contract, the proposer
6 shall demonstrate that it has all of the following:

7 (1) The qualifications, operations, management experience, and
8 experienced personnel necessary to carry out the terms of the
9 contract.

10 (2) The ability to comply with applicable correctional standards
11 and any specific court order, if required.

12 (3) A demonstrated history of successful operation and
13 management of other secure facilities.

14 (d) The proposer shall agree that this state may cancel the
15 contract at any time after the first year of operation, without penalty
16 to this state, on giving at least 90 ~~days~~ *days*' written notice.

17 (e) A contract may provide for annual contract price or cost
18 adjustments, except that any adjustments may be made only once
19 each year effective on the anniversary of the effective date of the
20 contract. If any adjustment is made pursuant to the terms of the
21 contract, it shall be applied to the total payments made to the
22 contractor for the previous contract year and shall not exceed the
23 percent of change in the average ~~consumer price index~~ *Consumer*
24 *Price Index* as published by the United States Department of Labor,
25 Bureau of Labor Statistics between that figure for the latest
26 calendar year and the next previous calendar year.

27 (f) Any price or cost adjustments to a contract different than
28 those authorized in subdivision (e) may be made only if the
29 Legislature specifically authorizes the adjustments and appropriates
30 moneys for that purpose, if required.

31 (g) An award of a contract shall not be made unless an
32 acceptable proposal is received pursuant to any request for
33 proposals. For the purposes of this subdivision "acceptable
34 proposal" means a proposal that substantially meets all of the
35 requirements or conditions set forth in this part and that meets all
36 of the requirements in the request for proposals.

37 (h) A proposal shall not be accepted unless the proposal offers
38 cost savings to this state. Cost savings shall be determined based
39 upon the standard cost comparison model for privatization

1 established by the ~~foreign private prison commission~~ *Foreign*
2 *Private Prison Commission*.

3 (i) A proposal shall not be accepted unless the proposal offers
4 a level and quality of services that are at least functionally
5 equivalent to those that would be provided by this state.

6 (j) A contract to provide correctional services as described in
7 this section may be for an initial period of not more than 10 years.

8 (k) The initial contract may include an option to renew for two
9 subsequent renewal periods of not more than five years each.

10 (l) The performance of the contractor shall be compared to the
11 performance of this state in operating similar facilities, as provided
12 in this subdivision. The Foreign Private Prison Commission shall
13 conduct a biennial comparison of the services provided by the
14 private prison contractor for the purpose of comparing private
15 versus public provision of services. The comparison of services
16 shall be based on professional correctional standards incorporated
17 into the contract and shall be used for the purpose of determining
18 if the private prison contractor is providing at least the same quality
19 of services as this state at a lower cost or if the contractor is
20 providing services superior in quality to those provided by this
21 state at essentially the same cost. In conducting the comparison of
22 services, the commission shall consider:

23 (1) Security.

24 (2) Inmate management and control.

25 (3) Inmate programs and services.

26 (4) Facility safety and sanitation.

27 (5) Administration.

28 (6) Food service.

29 (7) Personnel practices and training.

30 (8) Inmate health services.

31 (9) Inmate discipline.

32 (10) Other matters relating to services as determined by the
33 Foreign Private Prison Commission.

34 (m) The Foreign Private Prison Commission shall conduct a
35 cost comparison of executed privatization contracts once every
36 five years for each contract. If the commission determines that the
37 private prison facility costs are lower than the costs of this state
38 to provide the same services, one-half of the difference between
39 the state's costs and the private prison's costs shall be deposited
40 in the state General Fund and the remaining one-half of the moneys

1 shall be deposited in the Correctional Service Fund established
2 pursuant to Section 7452.

3 (n) The Foreign Private Prison Commission shall provide the
4 most recent service comparison and cost comparison under
5 subdivisions (l) and (m) to the Joint Legislative Budget Committee
6 for its review.

7 (o) A contract for providing correctional services to foreign
8 nationals in a Mexican private prison facility shall not be entered
9 into unless the following requirements are met:

10 (1) The private prison contractor provides audited financial
11 statements for the previous five years, or for each of the years the
12 contractor has been in operation, if fewer than five years, and
13 provides other financial information as requested.

14 (2) The private prison contractor provides an adequate plan of
15 insurance, specifically including coverage or insurance for civil
16 rights claims and liabilities as approved by the risk management
17 division of the Department of General Services.

18 (p) The sovereign immunity of this state does not apply to the
19 private prison contractor. Neither the contractor nor the insurer of
20 the contractor may plead the defense of sovereign immunity in
21 any action arising out of the performance of the contract.

22 (q) A contract for correctional services shall not authorize, allow,
23 or imply a delegation of authority or responsibility to a private
24 prison contractor for any of the following:

25 (1) Developing and implementing procedures for calculating
26 inmate release dates.

27 (2) Developing and implementing procedures for calculating
28 and awarding sentence credits.

29 (3) Approving the type of work inmates may perform and the
30 wages or sentence credits that may be given to inmates engaging
31 in the work.

32 (4) Granting, denying, or revoking sentence credits, placing an
33 inmate under less restrictive custody or more restrictive custody,
34 or taking any disciplinary actions.

35 (r) The contract shall require that all prisoners be fingerprinted
36 daily.

37 7452. (a) The Correctional Service Fund is hereby established
38 in the State Treasury, which shall consist of moneys deposited
39 pursuant to subdivision (m) of Section 7451. Upon appropriation
40 by the Legislature, moneys in the fund shall be available for

1 expenditure by the department for purposes of implementing the
2 provisions of this chapter.

3 (b) Moneys provided from the fund shall supplement, not
4 supplant, existing moneys for the following:

5 (1) Vocational training.

6 (2) Rehabilitation.

7 (3) Parole services.

8 7453. (a) This chapter shall not become operative unless,
9 before July 1, 2017, the United States agrees to amend the United
10 States-Mexico Treaty on the Execution of Penal Sentencing, or
11 adopts a new treaty with Mexico relating to penal sentencing, to
12 allow for the incarceration of inmates outside of the United States
13 in private prisons.

14 (b) The Attorney General shall notify, in writing, the Governor,
15 the Secretary of the Department of Corrections and Rehabilitation,
16 the Secretary of the Senate, and the Chief Clerk of the Assembly
17 of the date on which the conditions are met.